



7233-118

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

GERALD P. McCANN et al.

Serial No.: 10/622,133

Filed: July 17, 2003

For: DRINK DISPENSING SYSTEM

Group Art Unit: 3754

Examiner: Joseph A. Kaufman

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is being deposited this day, January 3, 2006, with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

John D. McConaghy, Reg. No. 26,773

RESPONSE

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby respond to the Office Action mailed September 9, 2005. In the Official Action, claims 1-3, 5-7,9, 10, 12, 13 and 17-19 were rejected under 35 U.S.C. 102 as anticipated by Gatter (U.S. Pat. No. 5,413,742). Claims 4, 8, 11 and 14 through 16 were rejected under 35 U.S.C. 103 as unpatentable over Gatter. Between the two rejections, all of claims 1 through 19 remain at issue. The application has not been amended in response to this Official Action.

The present invention is directed to a drink dispensing system including a control valve which is uniquely able to accommodate the employment of a single pump for both system charging and circulation. This provides increased utility for such features as recirculation cooling using an ice bin and rapid charging of a carbonator. These

features of the present invention are not found in the apparatus disclosed in Gatter. Further, the elements specifically recited in claims 1 through 19 operative to provide these features are specifically not found in Gatter.

Specifically turning to the claims, all of claims 1 through 19 recite an ice storage bin which include heat transfer coils therein. In Gatter, refrigeration coils are arranged about a carbonator. Heat transfer coils also transfer heat from a carbonated water recirculation circuit to a fresh water line. In neither instance is there an ice bin or heat transfer coils located therein.

Most notably, the present invention contemplates the inclusion of a control valve to achieve the forgoing features. The control valve is found in all nineteen claims. The valve is said to have two positions with the positions providing two separate operating modes.

In Gatter, there is no two position control valve providing specific communications with each position. In the Official Action, T couplings 27 and 28 are referenced as valves. In addition to the clarity provided by the Figure, these elements are referred to in the specification at column 3, line 41 and column 4, line 43 as T couplers. There are no first and second positions and no selected communications defined by any operation associated with these simple couplings. They provide no valve function.

Not only do the T couplers not provide valving, the couplings 27 and 28 are passive in order that the system may appropriately work. The couplings 27 and 28 operate as means to complete a carbonator circuit. As the system is charged with fresh water, the heat transfer coils are to provide cooling from the carbonated water to the fresh water. The flow of this cooling carbonated water is not to be shut off as it would detract from the cooling. There is also no connection between the charging of

carbonated water and the cooling thereof because there are two pumps performing those functions, pump 10 for charging and pump 26 for recirculation.

Looking to certain of the recitations found in some but not all of the claims of the present application, claims 2, 3, 6, 7, 9-12, 15-16 and 18-19 provide for a shunt or a bypass as separately provided in the application. There is no shunt around any valve in Gatter. The pump 26 only delivers flow in one direction, making a loop circuit and not parallel flow around anything in all of the device. Further, there is no passage associated with the T couplings 27, 28 which doesn't flow through the T couplings rather than shunted or bypassed around. Gatter also cannot provide a closed loop independent of the control valve as there is no control valve selectively cooperating with the control valve.

Section 2131 of the MPEP states in part:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."
Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Gatter reference cannot meet this objective test for anticipation under 35 USC 102 without a teaching of the elements missing from the teachings thereof, the control valve, the ice bin with heat transfer coils therein, the shunt and the bypass. Indeed, the express use of Gatter would also be frustrated by changing each such arrangement. As a *prima facie* case of anticipation cannot be supported by Gatter with regard to any of claims 1-19, reconsideration of the rejection under 35 USC 102 is requested.

Turning to the rejection under 35 USC 103, the reference to Gatter is presented. This reference fails for the reasons discussed above. Further, the Official Action asserts that the choice of pump speeds is obvious although not provided in Gatter.

However, the pumps of Gatter each have a specific application. There is no need for a two speed pump and it would be unobvious to provide same when a second speed on either of pumps 10 and 26 would perform no function.

Section 2143 establishes the requirements for a *prima facie* case of obviousness under 35 USC 103, stating:

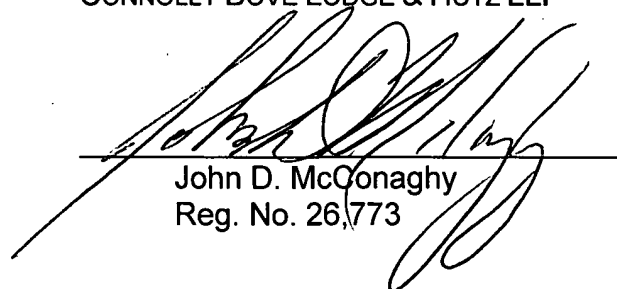
To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The applied reference does not disclose the limitation in all of claims as set forth above. There also is no teaching or motivation to use a two speed pump.

With the failures of Gatter to disclose elements of the claims, neither a *prima facie* case of anticipation nor a *prima facie* case obviousness can be supported by this reference. Reconsideration of the rejections of claims 1-19 over Gatter is requested.

Respectfully submitted,
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